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OFFICE OF PETITIONS

In re Application of
Xiao Tong et al
Application No. 09/938,391
Filed: August 24, 2001
Attorney Docket No. 3153.0034/PC10790A

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: DECISION DISMISSING PETITION
: PETITION UNDER 37 CFR 1.137(b)
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This is a decision on the petition under 37 CFR 1.137(b), filed June 20, 2002, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is not a final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed October 18, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice to submit an executed oath or declaration in compliance with 37 CFR 1.63, identifying the application by the application number and filing date, and a \$130 surcharge fee for its late filing. No reply or timely extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on December 19, 2001.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a

statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item (1).

The reply does not satisfy the requirements of 37 CFR 1.63. In this regard, the declaration submitted fails to identify the application by application number and filing date. Further, the page of the declaration executed by inventor Tong fails to indicate that additional inventors are being named in a supplemental sheet. Accordingly, a newly executed oath or declaration identifying each inventor and identifying the application by application number and filing date in compliance with the provisions of 37 CFR 1.63(a)(2) and 37 CFR 1.63(b)((1) is required.

Pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the \$1,960 extension of time fee submitted with the petition on June 20, 2002 was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be credited to petitioner's deposit account in due course.

In order to expedite revival of this application, petitioner may wish to consider submitting the items required by this decision on petition in a renewed petition under 37 CFR 1.137(b) by facsimile transmission to the telephone number indicated below and to the attention of the undersigned.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-8680.

Frances Hicks

Frances Hicks

Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy